IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 1164 OF 2007
IN
WRIT PETITION NO. 2004 OF 2007

Sayyed Ibrahim Babulal Kazi & Ors. ...Applicants
V/s.
Sayyed Bashir Jauddin Kazi & Ors. ...Respondents

Mr.Shailesh Kanetkar i/b. Mr.Girish S. Godbole for the Applicants.
Mr.A.P. Kulkarni for the Respondents.

CORAM : V.M. KANADE, J.
(VACATION JUDGE)

DATED : MAY 9, 2007

P.C. :-

1. Heard the learned Counsel for the applicants and the learned Counsel for the respondents.

2. The applicants have filed Writ Petition No.2004/2007 which is pending in this Court and by order dated 12th April, 2007, Rule was granted and order of status quo which was earlier granted on 26th March, 2007 is continued during the pendency of the petition. Further direction has been given to the Trial Court to dispose of the suit, expeditiously. During the pendency of this writ petition, this Civil Application has been taken out by the applicants who are the petitioners. It

is stated in the application that the order of status quo has not been properly construed by the Trial Court. It is submitted that the crop is ripe for cutting and if permission is not granted to the applicants to supply sugar-cane to the sugar factory, the entire crop would go waste and there will be irreparable loss to both the parties. It is stated in the application that this Court may appoint a Court Receiver for the purpose of cutting the sugar-cane crop and transporting the same to the sugar factory and the sale proceeds of the said sugar-cane crop to be deposited in the Trial Court.

3. The learned Counsel for the respondents, on the other hand, submitted that if the sugar-cane crop is allowed to be removed, then grave prejudice would be caused to the respondents since the respondents are claiming the southern portion of the suit property bearing about 3.5 acres which is demarcated by putting bundh and subsequently, it would not be possible to point out the exact tonnage in respect of the said sugar-cane and further dispute would rise regarding the division which is to be made of the sale proceeds. He

submits that he has no objection if the said sugar-cane which is there on the suit property is cut in two separate parts and proper record to that effect be maintained by the Court Commissioner.

4. The suit has been filed by the petitioners herein for permanent injunction restraining the defendants from interfering with and/or obstructing the the peaceful use, possession, occupation, cultivation and enjoyment of the suit land by the petitioners which consists of land bearing Gat No.320/B/1 admeasuring 2 hectares and 81 parts. In reply, the respondents have denied the said averments made by the petitioners in his plaint. In para 5 of the written statement which is filed by the respondents, it is stated that 50% of the said area is in their possession in view of the partition which had taken place in the year 1989 and since that time, they are independently cultivating the said half portion of the said land and that they have put boundary of bundh of 2 and half feet. The suit is pending in the trial Court.

5. In my view, since the sugar-cane crop is likely to be wasted if it is not cut within a short period of time, it would be appropriate if the Court Commissioner is appointed to carry out the work of cutting the sugar-cane crop.

6. Mr.Subhash Kulkarni is appointed as Court Commissioner by consent of the parties. The name of the Court Commissioner to be given to the trial Court within four days from today. The Court Commissioner shall cut the sugar-cane crop in two parts and the sugar-cane crop on the south side of the said property to the extent two and half acres be separately sent to the factory and the proper record of the two parts of the said sugar-cane crop shall be maintained. The sugar factory shall send the sale proceeds of the said two portions of the sugar-cane crop and the amount shall be deposited by the Court Commissioner in the Trial Court. The Trial Court is at liberty to invest the said amount in any nationalised bank, if necessary. The southern part of the sugar-cane crop to be sent to Chandrabhaga factory and the northern part to be sent to Pandurang factory.

. Civil Application is disposed of in the above terms.

(V.M. KANADE, J.)